

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MISSOURI

In Re:) Case No. 10-60066
WINDERMERE DEVELOPMENT) Chapter 7
COMPANY, LLC,)
Debtor.)

SECOND AMENDED
ORDER APPROVING TRUSTEE'S MOTION OF SETTLEMENT AGREEMENT

Presently before the Court is the Trustee's ("Trustee") motion to approve settlement agreement of counterclaim of Windermere Development Company ("Motion"). The Motion proposes to settle the counterclaim of Windermere Development Company LLC and others against the counterclaim defendants named in litigation pending in the Circuit Court of Camden County, Missouri, Case number 06CM-CC00393. The Motion seeks entry of an order (the "Order") under Section 105 of the Bankruptcy Code and Federal Rules of Bankruptcy Procedure 2002 and 9015.

THIS COURT HEREBY MAKES THE FOLLOWING FINDS OF FACT AND CONCLUSIONS OF LAW:

- A. The Court has jurisdiction to hear and determine the Motion pursuant to 28 U.S.C. §§ 157 and 1334.
- B. Venue is proper pursuant to 28 U.S.C. § 1409(a).
- C. Determination of the relief requested by the Motion is a "core proceeding" under 28 U.S.C § 157(b)(2)(A) and (N).
- D. The Trustee followed the procedures and law for giving notice of the Motion.

E. Proper, timely, adequate, and sufficient notice of the Motion has been provided in accordance with Section 102(1) of the Bankruptcy Code, Federal Rule of Bankruptcy Procedure 2002 due process of law, and no further notice of the Motion or the entry of this Order is required.

F. Reasonable opportunity to object or to be heard regarding the relief requested by the Motion was afforded to all interested persons and entities.

G. This is a final order and enforceable upon entry.

H. The Court finds as follows, to-wit:

1. Litigation was commenced in the Circuit Court of Camden County, Missouri by the Plaintiffs against William Jester, now deceased; Windermere Development Company, LLC, the debtor in this proceeding; Jester Capital Management, LLC; The Estates at Windermere, LLC; The Lodges at Windermere, LLC; The Villas at Windermere, LLC; Resource Development, Inc.; RDI LLC; Windermere Baptist Conference Center, Inc.; California Plain of Church Finance, Inc.; Reliance Trust Company; San Joaquin Bank; 1st Centennial Bank; National City Bank of the Midwest f/k/a Allegiant Bank; Consolidated Mortgage, Inc.; and others. The nature of the litigation commenced by the Plaintiffs against the defendants, including the debtor was, among other things, to quiet title to 1,300 acres of land with lakefront at The Lake of the Ozarks, Camden County, Missouri. The Plaintiffs alleged fraud against various defendants. Certain of the defendants, including debtor Windermere Development Company, LLC, filed counterclaims against the

Plaintiffs/Counterclaim Defendants, alleging malicious prosecution, abuse of process, tortious interference with a contract, slander of title, injurious falsehood, negligence, and civil conspiracy. The Counterclaim Plaintiffs sought \$15,000,000.00 against the Counterclaim Defendants in the counterclaim.

2. The Trustee's conclusions regarding this settlement are influenced by at least the following facts: (a) that Counterclaim Plaintiffs' main witness, William Jester, passed away on June 2, 2010; (b) that the bad economy would depress any jury verdict; (c) that the jury may include individuals who opposed further development around the Lake of the Ozarks, the prevention of which was a significant part of Counterclaim Plaintiffs' alleged damages; (d) that Counterclaim Defendants made the same settlement offer at a formal mediation ten months ago (November 2011) and have refused to subsequently increase their offer; (e) that Counterclaim Defendants apparently oppose their insurer settling the case on these terms; and (f) the additional costs associated with proceeding to trial would have significantly eroded whatever verdict amount a jury might have awarded.

3. The Counterclaim Defendants will pay the sum of \$500,000.00 to settle the counterclaims of the Counterclaim Plaintiffs. The \$500,000.00 shall be reduced by the contractual contingency attorneys' fee of 30% of the gross proceeds, plus reimbursement of litigation costs of \$9,777.44. This Court entered its order on August 17, 2010 allowing the Trustee to employ Jim Shoemake, Eric Walter, and Burton Shostak as special litigation counsel upon these terms. The net settlement

will then be divided one-half to the probate Estate of William Jester and one-half to this bankruptcy estate of Windermere Development Company, LLC.

I. The Trustee is authorized to execute all documents necessary to conclude the settlement and the terms of this Order.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. The court grants the Motion to settle the counterclaim of Windermere Development Company, LLC against Larry Akins, Don Buford, James How, Don Laramore, James Robinson, Charles Shrum; Robert Collins, an individual purporting to be a member of the Missouri Baptist Convention, a Missouri unincorporated association; and the Executive Board of the Missouri Baptist Convention, a Missouri nonprofit corporation.

2. No objections were filed to the Motion.

3. The terms and conditions of this Order, and the transactions contemplated hereby, are approved in all respects.

4. This Court retains jurisdiction to construe, enforce, and implement the terms and provisions of this Order.

Dated: 11/21/2012

/s/Arthur B. Federman
Arthur B. Federman
United States Bankruptcy Judge
Kansas City, Missouri

Attorney for movant to serve parties not receiving electronic notice